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The Raus-Heine Case Immunity Issue

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Can an agent of the Central Intelligence Agency claim the same privilege against a slander suit as a claims representative for the Department of Health, Education and Welfare or a customs agent?

The attorneys for Juri Raus, who has been identified as a CIA agent in a slander suit brought against him by a fellow Estonian emigre, have argued that the protection in his case is even more important than in other cases they cited.

The other cases, in which the courts held that an official of the government has absolute privilege against a suit for slander, they said, were "fairly pedestrian matters."

"Of much greater concern to the interests of the United States," they added, "is the nether world of international conspiracy, espionage and statecraft."

Key Difference

But the attorneys for Eerik Heine, a 46-year-old resident of Rexdale, Ont., who said Raus falsely called him a Communist and a KGB agent, have challenged Raus' attorneys to show "under what authority the organization for which defendant Juri Raus was allegedly employed, is authorized to issue maledictions in a course of its duties."

This, in fact, seems to be the key difference between the case of Heine v. Raus and the other cases. In those, various government officials made slanderous statements as a by-product of their other duties.

In this case, according to two affidavits filed by the CIA, Raus' specific assignment was to make derogatory statements about Heine.

In a 1959 case, Judge Learned Hand spelled out the reasons for protecting officials against slander suits:

"It goes indeed without saying that an official, who is in fact guilty of using his powers to vent his spleen upon others, or for any other personal motive not connected with the public good, should not

escape liability for the injuries he may so cause; and, if it were possible in practice to confine such complaints to the guilty, it would be monstrous to deny recovery.

Damper Effect Cited

"The justification for doing so is that it is impossible to know whether the claim is well founded until the case has been tried, and that to submit all officials, the innocent as well as the guilty, to the burden of a trial and to the inevitable danger of its outcome, would dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties . . ."

In this case, Raus' statements were apparently not a case of venting his spleen but of carrying out a directive by his employers.

Whether this case is indeed different from the others is the problem facing Chief Federal District Judge Roszel C. Thomsen in Baltimore.

The judge's problem undoubtedly reflects the dilemma faced by the CIA in 1963 when Heine began touring the United States and Canada showing a movie based on what he says were his experiences as an anti-Soviet guerilla fighter and began to emerge as an important leader in the Estonian community.

Court Record Noted

The court record indicates the CIA felt it had reason to believe Heine's growth in popularity among Estonians was a threat to "the integrity of the agency's foreign intelligence sources."

It thus presumably had to decide whether to permit him to become a leader in the Estonian community where, if he was indeed a Soviet agent, he could do considerable harm, or to try to find a way to expose him without revealing the CIA's own sources of information.

It was then, according to the CIA's affidavits, that Raus was instructed to make the statements about Heine.

It is logical to assume that the CIA took into account the likelihood that Heine would go

to court—although it undoubtedly hoped he would fade into obscurity or slip back through the Iron Curtain, thus, in effect, confirming the charges against him.

It was in this context that one of Raus' two attorneys, E. Barrett Prettyman Jr. (who has declined to say who is paying the rather considerable expenses of fighting Heine's suit), attempted last December to settle the case quietly out of court.

"Money Could Change Hands"

Heine's attorney, Ernest C. Raskauskas, said in a motion filed with the court early this month that Prettyman met with him and his co-counsel, Robert J. Stanford, "to discuss a settlement of this case, in which money would change hands, and in which the defendant would pay off the plaintiff."

"The settlement negotiations broke down," Raskauskas said, "because one of the conditions of the settlement required an outright dismissal of the suit, and counsel for the plaintiff would neither recommend nor would plaintiff auction his honor."

Alternative Suggested

Raskauskas told a reporter Prettyman proposed that the payment be made in such a way that it would not appear to come from Raus. Raskauskas said he replied that any payment would have to be a "very large sum of money"—enough to enable Heine to carry out his activities in behalf of Estonian liberation.

As an alternative, he said, he suggested that a settlement could be reached quickly if Prettyman could give him some compelling proof of the charges against Heine with which he could confront his client. It was at that point that the negotiations broke down, before any specific sum has been mentioned.

Shortly after this meeting the first mention of the CIA entered the case in the form of an affidavit signed by Richard Helms, deputy director of the Central Intelligence

Agency.

In a court hearing on April 14, Prettyman responded angrily to Raskauskas' charge of an attempted payoff.

"There were repeated discussions, in our office, in their office and over the phone. These discussions were informal, accompanied by the usual joking and joshing, and to characterize these as an attempt at a payoff is outrageous," he said.

"We could not sanction any settlement that gave the plaintiff any excuse to say he had been exonerated," Prettyman said.